



1. Services

100 Percent Helpdesk Ltd. ("100% Helpdesk") shall furnish to the Customer the services described in the contract or invoice provided to and accepted by the Customer (the "Services")

2. Fees, Invoicing, & Billing Disputes

(a) The Customer shall pay the fees for the Services at the rates as specified in the contract or invoice provided to and accepted by the customer, plus applicable taxes (the "Fees").

(b) Payments for the Fees shall be due and payable by the Customer to 100% Help desk in advance of the service term (monthly or annually).

(c) Invoices will be issued periodically and are payable in accordance with the invoice terms stated on each invoice. The Customer must give notice of invoice inquiries and disputes within 45 days of the invoice date, and, with such notice, provide any supporting documentation. After that time, the Customer will be deemed to have agreed upon the contents of the invoice and will forfeit all right to challenge any element of the invoice. Billing disputes will be settled in accordance with the Dispute Resolution provisions set out in this Agreement. The Customer must pay the undisputed portion of any invoice and all subsequent invoices in accordance with this Agreement.

3. Credit Check & Security Deposits

100% Helpdesk reserves the right to examine the credit record of all prospective or existing Customers and to require a security deposit as a pre-condition to providing or continuing Services. The Customer hereby consents to 100% Helpdesk or its representatives performing such a credit check, subject to applicable legislation. Any Customer whose Service has been disconnected for nonpayment of any amounts due to 100% Helpdesk will be required to pay any unpaid amounts in full, including accrued interest, before Service is restored. In addition, 100% Helpdesk will require a security deposit from the disconnected Customer wishing to re-establish Service. The amount of the security deposit shall be calculated as equivalent to the Customer's then current monthly Fees plus an amount equal to any costs associated with the establishment (or reestablishment) of the Service. After 180 days of Service the account will again be reviewed, and in the event all Charges have been paid according to the terms of the Agreement, then the security deposit may, at 100% Helpdesk's sole discretion, be refunded in full or credited to the Customer's account. Simple interest, based on the monthly savings account rate of a financial institution selected by 100% Helpdesk, will be paid on all sums retained by 100% Helpdesk for the security deposit.

4. Service Charges

Where special facilities or equipment are necessary or where 100% Helpdesk must incur any unusual expense in order to furnish the Services to the Customer (collectively, the "Special Work"), 100% Helpdesk shall provide to the Customer a written quote for the Special Work. If the Customer acknowledges in writing its agreement with the quote, then 100% Helpdesk shall provide the Special Work and be entitled to assess the additional charge to the Customer, which shall be payable upon the commencement of the Term (as herein defined).

5. Term

This Agreement shall be for the term indicated in the Service Description with the Commencement Date being the later of the Requested Install Date or the Actual Install Date, being the first day services are installed and ready for use (the "Term").

This Agreement will be deemed to be renewed for a further 12 months on the same terms and conditions set forth herein unless the Customer provides 100% Helpdesk with written notice of intent not to renew 30

days prior to the expiry of the current term.

6. 100% Helpdesk Property & Equipment

(a) All material and equipment provided by 100% Helpdesk and used in the provision of the Services ("100% Helpdesk Equipment") shall at all times be and remain the exclusive property of 100% Helpdesk unless provided to the Customer by 100% Helpdesk under a separate sales agreement.

(b) Upon termination of the Agreement for any reason described herein (disputes notwithstanding), the Customer shall surrender to 100% Helpdesk possession of all 100% Helpdesk Equipment in good order, repair and condition, normal wear and tear excepted.

(c) Nothing in this Agreement contemplates, constitutes or creates a transfer or license of any intellectual property from 100% Helpdesk to the Customer.

7. Termination

(a) If this Agreement is for any reason terminated by the Customer prior to the expiry of the Term, the Customer shall pay to 100% Helpdesk a termination fee (the "Termination Fee") equal to 50% of the remaining unpaid amount of the Fees for the period from the date of termination to the expiry of the Term. The Customer acknowledges that the Termination Fee is not in substitute or election of any other right or remedy 100% Helpdesk may have at law or in equity.

(b) 100% Helpdesk may, with 30 days notice, terminate all or any of the Services for any breach of this Agreement by the Customer, including but not limited to non-payment by the Customer of Fees not in dispute and all other amounts payable by the Customer to 100% Helpdesk pursuant to the terms of this Agreement or failure to comply with the Customer's obligations under the terms of this Agreement. In the event of Termination under this Clause 7

(b), the Customer shall remain liable for all outstanding Fees plus 50% of the remaining Monthly Fees to the end of the term.

(c) Either party shall be entitled to terminate this Agreement immediately with one day's written notice in the event of the other party's insolvency, receivership or voluntary or involuntary bankruptcy or in the event that 100% Helpdesk ceases to offer the Services. In the event of default by the Customer, any and all payments required to be made to 100% Helpdesk by the Customer shall be due and payable immediately.

(d) Termination of this Agreement for any reason shall not relieve the Customer from any liability for amounts owing and accrued prior to the time that such termination becomes effective and any Termination Fee.

(e) 100% Helpdesk shall be entitled to terminate this agreement with 90 days notice in the event that 100% Helpdesk ceases to offer the services ("Withdrawal from Market").

8. Customer Obligations

(a) The Customer shall:

- i. supply and maintain any equipment or cabling necessary for interconnection to 100% Helpdesk's Demarcation Point;
- ii. take all legal steps necessary for interconnection and provision of colocation space for the 100% Helpdesk Equipment, including but not limited to securing licenses, permits, Right of Way or other arrangements;
- iii. ensure at all times that the 100% Helpdesk Equipment (as herein defined) and the Customer or third party provided equipment is stored in a manner and in an environment which conform to the relevant equipment manufacturer's specifications;
- iv. be responsible for all loss and/or damage to the 100% Helpdesk Equipment, except where caused by the negligence of 100% Helpdesk;
- v. provide all necessary infrastructure required for the safe and efficient operation and maintenance of the 100% Helpdesk Equipment and the

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Customer or third party provided equipment in accordance with 100% Helpdesk, Canadian Standards Association and other specifications or regulations as applicable; and as 100% Helpdesk may specify, from time to time;

vi. permit 100% Helpdesk or its third party providers prompt, safe and unrestricted access to its premises for the purpose of performing its obligations under this Agreement;

vii. at all times comply with the terms and conditions of 100% Helpdesk's Acceptable Use Policy ("AUP"), domain name registration policy and IP allocation policy, which policies are incorporated into this Agreement by reference thereto;

viii. cooperate with investigations of breaches of 100% Helpdesk's AUP or other laws or statutes, where such investigation is undertaken by 100% Helpdesk or by authorities having jurisdiction over 100% Helpdesk, the Customer, or a third party who is the subject of the investigation; and

ix. be aware of, and comply with, changes to any federal or provincial law which may relate to the Customer's use of the Services.

(b) The Customer shall not:

i. obtain or seek to obtain, by any means whatsoever, information regarding the personal identification or password of any other person which is a customer of 100% Helpdesk or any network to which the Customer may be permitted access;

ii. obtain or seek to obtain access to or interfere with any programs or data maintained by 100% Helpdesk;

iii. develop or use programs which adversely affect or impact other customers, the Services, the Internet or any computer network;

iv. use, transmit or store anything obscene, offensive or defamatory or which appropriates a personality without legal permission or which in any way violates or infringes copyright, trademark or other intellectual property rights;

v. utilize the Services and the Internet for any purpose which is contrary to the laws of any government having jurisdiction over 100% Helpdesk and/or the Customer; and

x. omit any act or cause or permit any act to be committed or provide any services which will conflict with or affect in any way the provision of the Services by 100% Helpdesk.

(c) The Customer warrants that the Services will not be resold, unless 100% Helpdesk is notified in writing of the Customer's intent to do so. In the event that the Services are resold with notice to 100% Helpdesk, the Customer shall save and hold 100% Helpdesk harmless for all liability arising from the use or misuse of such resold services, which must be sold under a formal agreement similar in form to these terms and conditions, including the AUP. The Customer acknowledges that notice to 100% Helpdesk of its intent to resell the Services is an acceptance of this clause. The Customer may, however, share the Services with third parties without cost ("Shared Services"). The Customer acknowledges that liability for any use or misuse of the Shared Services shall rest with the Customer.

(d) In connection with any investigation of a customer's failure to observe its obligations or any malicious disruption of any computer system or computer program of 100% Helpdesk, and/or of any breaches of the terms of this Agreement by the Customer or by any person who has access to the Services provided to the Customer, the Customer agrees that 100% Helpdesk may in its sole discretion create and keep backup information and examine the Customer's programs, data, printed output, and other media. Use of this information is governed by 100% Helpdesk's published Privacy Policy.

9. 100% Helpdesk Obligations

100% Helpdesk shall:

(a) provided that the 100% Helpdesk Projected Installation Cost does not exceed the amount specified in the contract or invoice, 100% Helpdesk will use reasonable efforts to arrange for the supply, installation and maintenance of the 100% Helpdesk Equipment at each site specified by the Customer in this Agreement and ensure that the 100% Helpdesk Equipment is installed and maintained according to the manufacturer's specifications; and

(b) provided that the maximum cost of installing the Services and the 100% Helpdesk Equipment is less than the 100% Helpdesk Projected Installation Cost amount indicated in the Broadband Services Agreement, 100% Helpdesk will use reasonable efforts to activate the Services on or before the Requested Install Date provided that this Agreement is completed, signed and delivered to 100% Helpdesk in a reasonable amount of time prior to the Requested Install Date.

10. Web & Email Hosting Data

(a) In relation to 100% Helpdesk's web hosting service ("Hosting Services"), any information, materials or data (the "Material") supplied to 100% Helpdesk must be in a form requiring no additional manipulation or revision on the part of 100% Helpdesk in order for 100% Helpdesk to supply the Hosting Services to the Customer.

(b) In the event the Material provided by the Customer to 100% Helpdesk requires manipulation or revision by 100% Helpdesk, then 100% Helpdesk may, at its option and at any time, reject the Material, including any portion of the Material which has been put on 100% Helpdesk's server. 100% Helpdesk agrees to notify the Customer immediately of its refusal to place all or any portion of the Material on 100% Helpdesk's server and to provide the Customer with the opportunity to amend or modify the Material in order for 100% Helpdesk to provide the Hosting Services. The Customer may request that any required modifications be made by 100% Helpdesk, and 100% Helpdesk will then quote an additional cost to make such modifications, which shall be conducted outside the scope of these terms and conditions.

(c) 100% Helpdesk reserves the right to refuse or discontinue without notice any hosting services where the material or application to be hosted is in 100% Helpdesk's sole discretion considered indecent or pornographic, or which in any way promote activities which are illegal, or which may adversely affect networks connected to the Internet or which reflect bad "netiquette" (e.g., spam).

11. Connection Speed

Connection speed represents the speed of a connection and does not represent a guarantee of available end-to-end bandwidth.

12. Warranty

(a) 100% Helpdesk shall generally provide the Services listed in the contract or invoice in accordance with the SLA in respect of minimum service levels.

(b) The Customer acknowledges that the Services may be subject to unscheduled and unannounced outages and breakdowns which may not be rectified promptly. Customer acknowledges that 100% Helpdesk does not warrant uninterrupted or error free Services and that 100% Helpdesk does not warrant the content, availability, accuracy or other aspect of any information including, without limitation, all data, files and other information or content in any form or of any type, accessible or made available to or by the Customer or its end users through the use of the Services.

(c) In the event of the interruption, failure or breakdown in the Services, or of the loss or spoiling of the Customer's programs or data, 100% Helpdesk makes no warranty that either will be restored. The Customer assumes full responsibility for backing up its own files.

13. Service Interruption

(a) Interruption in this Agreement refers to the inability of the Customer to complete Internet network connections due to a malfunction of the 100% Helpdesk Equipment or 100% Helpdesk's core network, and 100% Helpdesk is unable to reach the last piece of 100% Helpdesk Equipment before the Customer's Demarcation Point. For greater certainty, Interruption does not include any 100% Helpdesk Equipment or network failure associated with Internet connections outside of 100% Helpdesk's core network, any failure caused by the Customer, any failure caused by power outage or human error or any failure due to termination of the Services by 100% Helpdesk in accordance with the terms of this Agreement.

(b) If applicable, any Interruption Rebate shall, upon written request by the Customer, be credited by 100% Helpdesk to the Customer within 30 days after 100% Helpdesk agrees to pay the Customer for the Interruption. (See Schedule B for SLA details.)

(c) Notwithstanding the foregoing in this Section, the Customer acknowledges that the aggregate of the Interruption Rebate in any calendar month shall not exceed the total Fees for such month.

(d) Any suspension of Services resulting from Scheduled Maintenance will not be considered an Interruption for the purpose of calculating the Service Availability or the Customer's entitlement to an Interruption Rebate, except to the extent such suspension of Services exceeds the announced maintenance window.

14. Monitoring, Maintenance, Repair, Testing, & Configuration of Services

(a) 100% Helpdesk will maintain staff at its Network Operations Centre every day throughout the Term between the hours of 8:30 a.m. To 5:00 p.m. (central time), which shall be the sole contact for reporting trouble with respect to the Services by telephone at 1-204-318-1674 or such other number as may be communicated by 100% Helpdesk to the Customer from time to time. Upon receipt of a trouble report, 100% Helpdesk shall initiate maintenance action. Following correction of the trouble, 100% Helpdesk shall inform the Customer that the Services have been restored.

(b) 100% Helpdesk's obligations under this Agreement do not extend to any relocation, maintenance, repair, rearrangement, alteration, modification or adjustment which becomes necessary due to, resulting from or in any way related to, damage, misuse or failure on the part of the Customer. 100% Helpdesk reserves the right to charge for unnecessary service calls requested by the Customer which are not the result of the disruption of 100% Helpdesk Services, and are related to Customer or third party equipment, service or actions.

(c) 100% Helpdesk will monitor and maintain its core network, the 100% Helpdesk Equipment and the Services on a 24 hour basis each day throughout the Term. Specifically, 100% Helpdesk will provide maintenance (including Scheduled Maintenance and emergency maintenance) on its core network and 100% Helpdesk Equipment up to the Demarcation Point. Any equipment or network beyond the

Demarcation Point shall be the responsibility of the Customer.

(d) 100% Helpdesk may, from time to time, at its sole cost and discretion and without approval by the Customer, suspend the provision of Services to the Customer in order to perform Scheduled Maintenance, which may include but not be limited to inspections, testing, adjustments, repairs, installations or upgrades related to the operation or configuration of 100% Helpdesk's core network, the 100% Helpdesk Equipment, or the delivery of Services. This Scheduled Maintenance will occur between 10:00 p.m. and 6:00 a.m., Central time. Except for emergency maintenance or service, 100% Helpdesk will provide 48 hours notice for any Scheduled Maintenance for those Services being affected.

15. Access

(a) **Emergency Access to Restore Services:** The Customer agrees to provide access to its premises immediately upon 100% Helpdesk's reasonable request at no charge to 100% Helpdesk where 100% Helpdesk requires such access in order to remedy or restore any Services. The Customer must provide such access in order to retain any remedial rights or credits to which it may be entitled under the SLA.

(b) **Other Access:** 100% Helpdesk may, upon reasonable notice (target 48 hours), make such inspections, tests, installations and adjustments as it deems necessary for the operation of the Customer or 100% Helpdesk's core network, network equipment or connecting facilities. The Customer agrees to make available to 100% Helpdesk, without charge, such facilities and equipment (including by providing access to the Customer premises) as are reasonably necessary in the circumstances. The Customer must comply with its obligations in this section in order to retain any remedial rights or credits to which it may be entitled under the SLA.

16. Limitation of Liability

(a) 100% Helpdesk's liability to the Customer under this Agreement, if any, shall not exceed the total Fees for the Service(s) in question during the month in which the event giving rise to the liability occurred. 100% Helpdesk's liability to the Customer, if any, shall be limited to direct damages. In no event shall 100% Helpdesk be liable for lost profits, loss of data, economic loss, or any other indirect, incidental, consequential, special, exemplary or punitive damages of any kind (even if 100% Helpdesk has been advised of the possibility of such damages), arising out of or in any way connected with this Agreement. These limitations apply to all causes of action, including breach of contract and tort (including negligence).

(b) Under no circumstances will 100% Helpdesk or its successors and assigns, be liable to the Customer for any incidental, special or consequential damages, expenses, costs, liability, loss or damage whatsoever, whether arising in negligence, tort, statute, equity, contract, common law or any other cause of action or legal theory. The Customer agrees, acknowledges and confirms that 100% Helpdesk's liability arising out of or in connection with this Agreement and the provision of the Services, and the Customer's exclusive remedy, shall be limited to the Fee paid by the Customer and that this limitation is fair and reasonable in the commercial circumstances of this Agreement and that 100% Helpdesk would not have entered into this Agreement but for the Customer's agreement to limit 100% Helpdesk's liability in the manner, and the extent, provided for herein.

(c) For greater certainty, Customer agrees that 100% Helpdesk and its successors and assigns shall not be liable for any lost profits, anticipated revenue, loss of data, loss of use of any information system, lost business revenue, failure to realize expected savings or any other commercial or economic loss of any kind whatsoever arising out of or in connection with this Agreement or the provision of the Services, even if 100% Helpdesk has been advised of the possibility of such loss.

(d) 100% Helpdesk is not liable for protection or privacy of electronic mail or other information transferred through the Services or any other network provider its customers may utilize.

(e) 100% Helpdesk assumes no liability arising from the use of the Services furnished by 100% Helpdesk in combination with services, products or equipment provided by Customer or any third parties.

(f) The Customer shall have sole responsibility for the preparation of its programs and data. 100% Helpdesk, its directors, employees, sponsors and agents shall not be responsible for any fault or error in the Customer's

programs or any programs accessed through the Services or the Internet. (g) This Section "Limitation of Liability" shall apply even in the event of a breach of condition, a breach of an essential or fundamental term or a fundamental breach of this Agreement by 100% Helpdesk.

17. Indemnity

(a) The Customer shall indemnify and save 100% Helpdesk, its successors and assigns, and their directors, officers, employees and agents harmless from and against all loss, liability or damages of any type and expense, including reasonable legal fees and disbursements, arising from any and all claims by any third party, including end users and distributors (collectively, the "Third Party"), in connection with the use of the Services (and related equipment) by the Customer or any Third Party or in connection with the Customer's failure to comply with its obligations under this Agreement, whether the failure is attributable to the Customer or to some other person using the Customer's account with or without permission of the Customer.

(b) The Customer shall indemnify 100% Helpdesk, its successors and assigns and their directors, officers, employees and agents, against any claim by a Third Party for alleged infringement of any copyright, trademark or any other intellectual property rights which arises as a result of the storage or processing of any of the Customer's programs or data on or through the Services or the Internet.

(c) The indemnities contained within this Section "Indemnity" shall survive termination of this Agreement for the maximum amount of time permitted by law.

18. Dispute Resolution

In the event of any dispute, controversy, claim or alleged breach respecting this Agreement which cannot be resolved (each a "Dispute"), the Dispute shall be submitted to arbitration. The arbitration shall be held in Winnipeg, Manitoba, and shall be conducted in accordance with the The Arbitration Act (Manitoba), by a single arbitrator appointed by a Justice of the Manitoba Court of Queen's Bench. The decision of the arbitrator shall be final and binding upon the parties and the expense of the arbitration shall be paid as the arbitrator determines.

19. Change Request

If the Customer wishes to order additional services or make a change to the Services:

- the Customer may submit to 100% Helpdesk a written "Change Request" detailing the change in the Services being requested and the requested date for the changes in the Services;
- 100% Helpdesk will respond to the Customer in writing via e-mail within fifteen (15) business days of receipt of the Change Request (the "Estimate"), stating whether the change may be made, and if so, specifying the estimated cost and time required to implement the change and the impact, if any, of the change on the Services; and
- the Customer may respond to 100% Helpdesk in writing via e-mail within fifteen (15) business days of receipt of the Estimate by either advising 100% Helpdesk to proceed with the change based on the estimated cost and time schedule specified in the Estimate or by providing written notice that the Customer is withdrawing the Change Request (the "Withdrawal"). For greater certainty, if 100% Helpdesk does not receive the Customer's Withdrawal 7 days within delivery of the Estimate, then 100% Helpdesk shall deem the Change Request to have been withdrawn by the Customer.

20. Independent Contractors

The parties to this Agreement agree that the relationships created by this Agreement is that of independent contractors.

21. Confidential Information

(a) "Confidential Information" means any data, documentation or other information of a proprietary nature, and which a party ought to know is confidential or proprietary, which is disclosed or made available to the other party in connection with the negotiation, preparation or performance of this Agreement and the design, installation, delivery or implementation of the Services, including without limitation, the network design specifications.

(b) Each party agrees not to disclose the Confidential Information of the other party without the other party's written consent, except as required by law, and agrees to take such care to protect the confidentiality of the

- Confidential Information as would be taken by a reasonable party to protect its own confidential information from disclosure. Furthermore, each party shall indemnify and save the other harmless from any losses or damages directly or indirectly caused by the disclosure of Confidential Information by the party or any of its agents, contractors, subcontractors, employees, successors or permitted assigns.
- (c) This Section "Confidential Information" (in its entirety) shall not apply to information which either party gains or may gain through independent sources, provided such information is not gained from a third party in breach of a similar non-disclosure agreement.
- (d) This Section "Confidential Information" shall not apply to requests for information from a law enforcement, government, or agency having jurisdiction over 100% Helpdesk or the Customer, nor shall it apply to information requested pursuant to a subpoena or other legal proceeding.
- (e) Both parties rights and obligations under this Section "Confidential Information" survive any termination of this Agreement for a period of 24 months.

22. General Provisions

- (a) **Amendment:** All amendments to this Agreement shall be in writing duly executed by each party in the same manner and with the same formality as this Agreement.
- (b) **Assignment:** The Customer shall not assign this Agreement without the prior written consent of 100% Helpdesk, which consent shall not be unreasonably withheld. Any attempted assignment without such prior written consent shall be void. 100% Helpdesk shall be permitted to assign this Agreement without the consent of the Customer.
- (c) **Customer:** Use of the term "**Customer**" shall in all cases include the directors, officers, employees and agents of the Customer.
- (d) **Industry Terms:** Words having well-known technical or trade meanings shall be so construed, as the context reasonably requires.
- (e) **Discretion of 100% Helpdesk:** Any discretion, option, decision or opinion by 100% Helpdesk shall be sufficiently exercised or formed if exercised or formed by or subsequently ratified by 100% Helpdesk's system administrator or any other person or persons designated by 100% Helpdesk's directors.
- (f) **Entire Agreement:** This Agreement constitutes the entire agreement among 100% Helpdesk and Customer with respect to the matters referred to herein, and supercedes all prior negotiations, proposals, agreements, representations, warranties, whether oral or written, with respect to such matters.
- (g) **Enurement:** This Agreement shall be binding upon and enure to the benefit of 100% Helpdesk and the Customer and their respective successors and permitted assigns.
- (h) **Governing Law:** This Agreement shall be governed by and interpreted according to the laws of the Province of Manitoba and the laws of Canada applicable therein.
- (i) **Interpretation:** In this Agreement, the sections and headings are for convenience of reference only and shall not affect its construction or interpretation.
- (j) **Non-Waiver:** No waiver of any term or provision or of any breach or default shall be valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any other terms or provision or any subsequent breach or default of the same or similar nature.
- (k) **Notice:** All notices provided for shall be given in writing and transmitted by personal delivery, prepaid first class registered or certified mail to the addresses identified: **Customer:** Address indicated in the Broadband Services Agreement; **100% Helpdesk: 63 Goulet St, Suite 350, Winnipeg MB R3H 0G1**
- (l) **Severability:** The invalidity, illegality or unenforceability of any one or more provisions of this Agreement shall not affect or impair any other provisions of this Agreement.
- (m) **Force Majeure:** Any delay or failure of either party to perform its obligations under this Agreement shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as (by way of example and not by way of limitation) acts of God or Nature including fires, floods, windstorms, earthquakes or other natural disasters,

- epidemic, war, acts of terrorism, insurrection, revolution, riots or civil disputes, nuclear reaction, explosions, inability to obtain power, material labour, equipment or transportation, action, decision, order or regulation by any governmental authority or court of competent jurisdiction, provided that, written notice of the delay or failure shall be given by the affected party to the other party within ten (10) days.
- (n) **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same instrument.
- (o) **Time.** Time shall be of the essence in this Agreement.